

## Chapter 111. Clinical Laboratory Personnel

### ' 11101. Scope of Chapter

The rules of this chapter prescribe the procedures governing the investigation of complaints, reports, and information evidencing legal cause under the Louisiana Clinical Laboratory Personnel law for the suspension, revocation, imposition of probation on, or other disciplinary action against persons holding licenses, certifications, or permits under the Louisiana Clinical Laboratory Personnel law and the initiation of formal enforcement proceedings and adjudication of administrative complaints by the Clinical Laboratory Personnel Committee and the Louisiana State Board of Medical Examiners.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:195 (March 1996).

### ' 11103. Definitions

As used in this chapter, the following terms shall have the meanings specified:

*Board* the Louisiana State Board of Medical Examiners.

*Committee* the Clinical Laboratory Personnel Committee to the Louisiana State Board of Medical Examiners, as established and constituted under R.S. 37:1314.

*Law* the Louisiana Clinical Laboratory Personnel Law, R.S. 37:1311-1329, as the same may be amended hereafter.

*Licensee* a person who holds a license, certification, or permit issued by the board, on the recommendation of the committee, under the law.

*Respondent* a licensee who has been named in an administrative complaint filed with the committee, alleging cause under the law for revocation, suspension, or the imposition of probation on the license, certification, or permit of the licensee.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

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### ' 11105. Investigation

A. Upon receipt of information, by complaint, report, or otherwise coming to its attention, which, if established as true, would constitute legal cause under the law for the revocation, suspension, or the imposition of probation on the license, certification, or permit of a licensee, the committee may designate one or more of its members, employees, or agents as "investigating officers," to conduct such investigation or inquiry as they may deem appropriate to determine whether there is probable cause to initiate formal administrative proceedings against the subject licensee. To obtain evidence of violations of the law or otherwise to aid in an investigation, investigating officers may request that the board issue and serve investigative subpoenas to obtain documents or sworn testimony by deposition.

B. Except to the extent that disclosure of an investigation to the subject licensee would, in the judgment of the investigating officers, prejudice the investigation, notice of the initiation and pendency of an investigation, stating the nature and basis of the information prompting the investigation, shall promptly be given in writing to the subject licensee, who shall be requested and given an opportunity to respond to the complaint or other information giving rise to the investigation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:196 (March 1996).

### ' 11107. Disposition of Investigation

A. If, having conducted an investigation, the investigating officers determine that there is probable cause to believe that a licensee has engaged or is engaging in conduct, acts or omissions constituting legal cause under the law for the revocation, suspension, or the imposition of probation on the license, certification, or permit of the subject licensee, the investigating officers shall file with the committee an administrative complaint against the licensee pursuant to ' 11109. Before filing an administrative complaint with the committee, the investigating officers shall give notice by mail to the subject licensee of the intent to file an administrative complaint, including a copy of the proposed complaint or statement of the facts or conduct which the investigating officers believe warrant the initiation of enforcement proceedings by administrative complaint, and the licensee shall be given a reasonable opportunity to show compliance with all lawful requirements for the retention of licensure and to persuade the investigating officers that an administrative complaint is not justified or warranted.

B. If, having conducted an investigation, the investigating officers determine that there is insufficient evidence to establish legal cause for formal action by the committee, the investigating officers may recommend to the committee that the investigation be dismissed or concluded without formal action.

C. Investigating officers may also recommend that an investigation be concluded or otherwise disposed of pursuant to consent order or other informal disposition which has been agreed to in writing by the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:196 (March 1996).

' 11109. Complaint

A. Proceedings to adjudicate an administrative enforcement action shall be initiated by the filing of a written administrative complaint with the committee. The complaint shall be signed by investigating officers appointed and designated by the committee with respect to the subject matter of the complaint and shall name the accused licensee as respondent in the proceedings.

B. The complaint shall set forth, in separately numbered paragraphs, a concise statement of the material facts and matters alleged and to be proven by the investigating officers including the facts giving rise the committee's jurisdiction over the respondent, the facts constituting legal cause under law for administrative action against the respondent, and the statutory or regulatory provisions alleged to have been violated by respondent. The complaint shall conclude with a request for the administrative sanction or other relief sought by the investigating officers and shall bear the name, address, and telephone number of complaint counsel, if any, engaged by the committee to present the case at evidentiary hearing before the committee. The complaint shall also contain the certificate of the investigating officer that the requirements of ' 11107.A of these rules and of R.S. 37:916(C) have been satisfied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:196 (March 1996).

' 11111. Notice of Hearing

A. Upon the filing of an administrative complaint pursuant to ' 11109, the committee shall docket the complaint and schedule the complaint for hearing before the committee not less than 45 days nor more than 180 days thereafter; provided, however, that such time may be lengthened or shortened as the committee determines may be necessary or appropriate to protect the public interest or upon motion of the investigating officer or respondent pursuant to a showing of proper grounds. In the event that the respondent's license, permit, certification, or registration has been suspended by the board pending hearing on the recommendation of the committee, pursuant to R.S. 49:961(C), evidentiary hearing on the complaint shall be noticed and scheduled not more than 45 days after the filing of the complaint.

B. A written notice of the complaint and the time, date, and place of the scheduled hearing thereon shall be served upon the respondent by registered, return-receipt-requested mail, as well as by regular first class mail, at the most current address for the respondent reflected in the official records of the committee, or by personal delivery of the complaint to the respondent. The notice shall include a statement of the legal authority and jurisdiction under which the hearing is to be held and shall be accompanied by a certified copy of the administrative complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:196 (March 1996).

' 11113. Response to Complaint; Notice of Representation

A. Within 15 days of service of the complaint, or such longer time as the committee, on motion of the respondent, may permit, the respondent may answer the complaint, admitting or denying each of the separate allegations of fact and of law set forth therein. Any matters admitted by respondent shall be deemed proven and established for purposes of adjudication. In the event that respondent does not file a response to the complaint, all matters asserted therein shall be deemed denied.

B. Any respondent may be represented in an adjudication proceeding before the committee by an attorney at law duly admitted to practice in any state. Upon receipt of service of a complaint pursuant to this chapter, or thereafter, a respondent who is represented by legal counsel with respect to the proceeding shall, personally or through such counsel, give written notice to the committee of the name, address, and telephone number of such counsel. Following receipt of proper notice of representation, all further notices, complaints, subpoenas, orders, or other process related to the proceeding shall be served on respondent through his or her designated counsel of

record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:197 (March 1996).

' 11115. Pleadings, Motions; Service

A. All pleadings, motions, or other papers permitted or required to be filed with the committee in connection with a pending adjudication proceeding shall be filed by personal delivery at or by mail to the office of the committee and shall by the same method of delivery be concurrently served upon complaint counsel designated by the complaint, if filed by or on behalf of respondent, or upon respondent, through counsel of record, if any, if filed by complaint counsel.

B. All such pleadings, motions, or other papers shall be submitted on plain white, letter-size (82 by 11 inches) bond, with margins of at least one inch on all sides and text double-spaced except as to quotations and other matter customarily single-spaced, shall bear the caption and docket number of the case as it appears on the complaint and shall include the certificate of the attorney or person making the filing that service of a copy of the same has been effected in the manner prescribed by ' 11115.A.

C. The committee may refuse to accept for filing any pleading, motion, or other paper not conforming to the requirements of this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:197 (March 1996).

' 11117. Prehearing Motions

Motions for continuance of hearing, for dismissal of the proceeding and all other prehearing motions shall be filed not later than 30 days following service of the complaint on the respondent or 15 days prior to the hearing, whichever is earlier. Each prehearing motion shall be accompanied by a memorandum which shall set forth a concise statement of the grounds upon which the relief sought is based and the legal authority therefor. A motion may be accompanied by an affidavit as necessary to establish facts alleged in support of the motion. Within 10 days of the filing of any such motion and memorandum or such shorter time as the committee may order, the investigating officers, through complaint counsel, may file a memorandum in opposition to or otherwise setting forth the investigating officers' position with respect to the motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:197 (March 1996).

' 11119. Motions for Continuance of Hearing

A. A motion for continuance of hearing shall be filed within the delay prescribed by ' 11117 of these rules, provided that the committee may accept the filing of a motion for continuance at any time prior to hearing upon a showing of good cause not discoverable within the time otherwise provided for the filing of prehearing motions.

B. A scheduled hearing may be continued by the committee only upon a showing by respondent or complaint counsel that there are substantial legitimate grounds that the hearing should be continued balancing the right of the respondent to a reasonable opportunity to prepare and present a defense to the complaint and the committee's responsibility to protect the public health, welfare, and safety. Except in extraordinary circumstances evidenced by verified motion or accompanying affidavit, the committee will not ordinarily grant a motion to continue a hearing that has been previously continued upon motion of the same party.

C. If an initial motion for continuance is not opposed, it may be granted by the investigating officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:197 (March 1996).

' 11121. Disposition of Prehearing Motions

A. Any prehearing motion, other than an unopposed initial motion for continuance of hearing which may be granted by the investigating officers, shall be referred for decision to the presiding officer of the hearing panel designated with respect to the proceeding for ruling. The presiding officer, in his discretion, may refer any prehearing motion to the entire panel for disposition, and any party aggrieved by the decision of a presiding officer on a prehearing motion may request that the motion be reconsidered by the entire panel.

B. Prehearing motions shall ordinarily be ruled upon by the presiding officer or the hearing panel, as the case

may be, on the papers filed, without hearing. On the written request of respondent or of complaint counsel, however, and on demonstration that there are good grounds therefor, the presiding officer may grant opportunity for hearing, by oral argument, on any prehearing motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:198 (March 1996).

' 11123. Subpoenas for Hearing

A. Upon request of the respondent or complaint counsel and compliance with the requirements of this section, the executive director of the board shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence at an adjudication hearing.

B. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the committee only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the committee with reference to the value of the time employed and the degree of learning or skill required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:198 (March 1996).

' 11125. Prehearing Conference

A. In any case of adjudication noticed and docketed for hearing, counsel for respondent and complaint counsel may agree, or the presiding officer may require, that a prehearing conference be held among such counsel, or together with the committee's independent counsel appointed pursuant to ' 11127.D hereof, for the purpose of simplifying the issues for hearing and promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

B. Following such prehearing conference the parties shall, and without such conference the parties may by agreement, agree in writing on a prehearing stipulation which should include:

1. a brief statement by complaint counsel as to what such counsel expects the evidence to be presented against respondent to show;
2. a brief statement by respondent as to what the evidence and arguments in defense are expected to show;
3. a list of the witnesses to be called by complaint counsel and by respondent, together with a brief general statement of the nature of testimony each such witness is expected to give;
4. any stipulations which the parties may be able to agree upon concerning undisputed claims, facts, testimony, documents, or issues; and
5. an estimate of the time required for the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:198 (March 1996).

' 11127. Conduct of Hearing; Record

A. Unless requested by the respondent, adjudication hearings shall be conducted in closed session.

B. At an adjudication hearing, opportunity shall be afforded to complaint counsel and respondent to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine, and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for a full and true disclosure of the facts and disposition of the complaint.

C. Unless stipulation is made between the parties, and approved by the hearing panel, providing for other means of recordation, all testimony and other proceedings of an adjudication shall be recorded by a certified stenographer who shall be retained by the board to prepare a written transcript of such proceedings.

D. During evidentiary hearing, the presiding officer shall rule upon all evidentiary objections and other procedural questions, but in his discretion may consult with the entire panel in executive session. At any such hearing, the committee may be assisted by legal counsel, retained by the committee for such purpose, who is

independent of complaint counsel and who has not participated in the investigation or prosecution of the case. If the committee or panel is attended by such counsel, the presiding officer may delegate to such counsel ruling on evidentiary objections and other procedural issues raised during the hearing.

E. The record in a case of adjudication shall include:

1. the administrative complaint and notice of hearing, respondent's response to the complaint, if any, subpoenas issued in connection with discovery in the case or hearing of the adjudication, and all pleadings, motions, and intermediate rulings;
2. evidence received or considered at the hearing;
3. statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;
4. offers of proof, objections, and rulings thereon;
5. proposed findings and exceptions, if any;
6. the decision, opinion, report, or other disposition of the case made by the committee.

E. Findings of fact shall be based exclusively on the evidence of record and on matters officially noticed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:198 (March 1996).

' 11129. Evidence

A. In an adjudication hearing, the committee, or the designated hearing panel thereof, may give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Effect shall be given to the rules of privilege recognized by law. The committee or panel may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

B. All evidence, including records and documents in the possession of the committee which complaint counsel desires the committee to consider, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the respondent before being received in evidence.

C. Notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the committee's professional knowledge. Parties shall be notified either before or during the hearing of the material noticed or sought by a party to be noticed, and they shall be afforded an opportunity to contest the material so noticed. The committee's professional experience, technical competence, and knowledge may be utilized in the evaluation of the evidence.

D. Any member of the committee serving as presiding officer in an adjudication hearing shall have the power to and shall administer oaths or affirmations to all witnesses appearing to give testimony, shall regulate the course of the hearing, set the time and place for continued hearings, fix the time for the filing of briefs and other documents, if any are required or requested, and may direct the parties to appear and confer to consider simplification of the issues.

E. Except as otherwise governed by the provisions of these rules, adjudication hearings before the committee shall be governed by the Louisiana Code of Evidence, insofar as the same may be applied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:199 (March 1996).

' 11131. Informal Disposition

The committee may recommend to the board an informal disposition, by default, consent order, agreement, settlement, or otherwise of any adjudication pending before it. A consent order shall be considered by the committee only upon the recommendation of the investigating officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:199 (March 1996).

' 11133. Recommended Decisions; Notice

A. The recommended decision of the committee in an adjudication proceeding shall be set forth in writing, shall include findings of fact and conclusions of law, and shall be signed by the presiding officer of the hearing panel on

behalf and in the name of the committee.

B. Upon issuance of a recommended decision, a certified copy thereof shall promptly be served upon respondent's counsel of record, or upon respondent personally in the absence of counsel, in the same manner of service prescribed with respect to service of complaints.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:199 (March 1996).

' 11135. Rehearings

A. A recommended decision by the committee in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the committee pursuant to written motion filed with the committee within 10 days from service of the recommended decision on respondent. A motion for rehearing, reopening, or reconsideration shall be made and served in the form and manner prescribed by ' 11115 and shall set forth the grounds upon which such motion is based, as provided by ' 11135.B.

B. The committee may grant rehearing, reopening, or reconsideration if it is shown that:

1. the recommended decision is clearly contrary to the law and the evidence;
  2. the respondent has discovered since the hearing evidence important to the issues which he or she could not have with due diligence obtained before or during the hearing;
  3. other issues not previously considered ought to be examined in order properly to dispose of the matter;
- or
4. there exists other good grounds for further consideration of the issues and the evidence in the public interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:199 (March 1996).

' 11137. Effect of Recommended Decision; Appeal to Board

A. A recommended decision of the committee shall be adopted by the board and become final and effective, subject to appeal as hereinafter provided, 20 days after the date of its service on the respondent if no rehearing has been sought or 20 days after the committee issues its decision following a timely request for rehearing or reconsideration, whichever is later.

B. A recommended decision of the committee which is timely appealed shall not become effective as to the respondent until such recommended decision is adopted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:200(March 1996).

' 11139. Appeal of Recommended Decision

A. A respondent may appeal a recommended decision of the committee by giving written notice of intent to appeal to the board, the committee, and the investigating officers prior to the date on which such recommended decision would become final pursuant to ' 11137.A.

B. Upon receipt of a notice of appeal, the committee shall promptly transmit to the board the entire hearing record.

C. Following service of notice of appeal, on such date as may be designated by the board, the respondent and the investigating officers shall appear before the board, in person or through legal counsel and/or other representative, and shall be entitled to make such relevant representations and arguments as they deem appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:200(March 1996).

' 11141. Conduct of Appeal Before Board

A. A respondent who fails without good cause, as determined by the board, to appear and proceed at appeal proceedings shall be deemed to have waived his right to appeal.

B. Appeal of a recommended decision of the committee shall be confined to the record of the hearing and the issues addressed and determined therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR

22:200(March 1996).

' 11143. Decision by Board

A. The board shall adopt the recommended decision of the committee as its own if the respondent has not appealed such decision.

B. Upon appeal of a recommended decision of the committee, the board shall consider the entire hearing record together with the representations and arguments made before it by the respondent and the investigating officers and render its decision thereon as soon as practicable following conclusion of the appeal proceedings.

C. The board may affirm and adopt, reverse, or modify and adopt the recommended decision of the committee.

D. The decision of the board shall be given in writing, including a statement of the basis and reasons for the decision, dated and subscribed by the president of the board or other presiding officer. A copy of the decision shall be served on the respondent by certified mail, return-receipt-requested, and delivered to the investigating officers and the committee.

E. The decision of the board shall become final and effective 10 days after the date of its service on the respondent, subject to reconsideration by the board as hereinafter provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:200(March 1996).

' 11145. Reconsideration on Appeal

A. A decision by the board pursuant to a recommended decision by the committee in a case of adjudication shall be subject to reconsideration by the board pursuant to written motion filed with the board within 10 days from service of the board's decision on respondent. A motion for reconsideration shall be made and served in the form and manner prescribed by ' 11115 and shall set forth the grounds upon which such motion is based, as provided by

' 11145.B.

B. The board may grant reconsideration if it is shown that:

1. the decision is clearly contrary to the law and the evidence;
  2. other issues not previously considered ought to be examined in order properly to dispose of the matter;
- or
3. there exists other good grounds for further consideration of the issues and the evidence in the public interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1311-1329 and R.S. 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:200(March 1996).